IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

MACA.No. 565 of 2004

OPMV.947/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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APPELLANT/3RD RESPONDENT

THE ORIENTAL INSURANCE CO.LTD.,
KOTTAYAM, REPRESENTED BY ITS MANAGER,
REGIONAL OFFICE, ERNAKULAM NORTH, KOCHI-18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS: CLAIMANTS
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1. O.K.KESAVAN, ONATTU HOUSE, PAMPADY,
KOTTAYAM.

2. AMMINI KESAVAN, ONATTU HOUSE,
PAMPADY, KOTTAYAM.

3. O.K.MOHANAN, ONATTU HOUSE,
PAMPADY, KOTTAYAM.

4. E.K.VINAYAN, ONATTU HOUSE, PAMPADY,
KOTTAYAM.

BY ADV. SRI.P.NARAYANAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 17/09/2007, ALONG WITH MACA NO. 562 OF 2004, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.S.RADHAKRISHNAN & A.K.BASHEER, JJ.

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M.A.C.A.No.562 & 565 OF 2004

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Dated this the 17th day of September, 2007

JUDGMENT

Radhakrishnan, J

Both these appeals are preferred by the Insurance Company/3rd respondent in O.P.(MV)Nos.946/97 and 947/97. Tribunal disposed of both the Original Petitions by a common order dated 15th March 2003. Accident had occurred on 26.3.96 at 7 p.m. at 7th Mile K.K.Road in which two persons Vijayan aged 37 and Sabu aged 29 died. The claim petitions were preferred by the legal heirs of the deceased persons. According to the petitioners, while the two deceased were travelling in a Motor Cycle KLQ 9202, a Mini lorry bearing Reg.No. KL3A/5768 driven by 2nd respondent knocked them down and sustained serious injuries and were taken to the Medical College Hospital, but succumbed to the injuries. Tribunal awarded Rs.2,84,000/- in O.P.946/97 and Rs.1,50,000/- in O.P.947/97 as compensation amount payable by the Insurance company.

2. Learned counsel appearing for the Insurance Company submitted that the accident had occurred due to the negligence of the rider of the motor cycle alone and the respondents in the original petition are not liable to get any compensation. Petition under Section

170 is filed seeking permission to contest the claim on all grounds and the same was allowed. Reference was made to Exts.B1 and B2, FIRs in Crime No.64/96 of Pampady Police Station and submitted that those documents would show that the motor cyclist hit on a parked lorry. The evidence in this case consists of the oral evidence of PW1 and PW2 and documentary evidence of Exts.A1 to A6 and B1 and B2. PW2, the occurrence witness had deposed that the accident had occurred due to the negligence of the lorry driver. Evidence of PW2 is more relevant compared to the version in the F1 statement. Person who has given the F1 statement was not examined. Under such circumstances, there is no reason to discard the evidence of PW2. We therefore, find no error in the finding of the Tribunal.

We therefore find there is no reason to interfere with the compensation amount awarded by the Tribunal. Both the appeals lack merit and are dismissed.

K.S.RADHAKRISHNAN, JUDGE

A.K.BASHEER, JUDGE

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